

STATE OF FLORIDA  
DEPARTMENT OF CHILDREN AND FAMILIES  
OFFICE OF APPEAL HEARINGS

**FILED**

Oct 14, 2019

Office of Appeal Hearings  
Dept. of Children and Families

[REDACTED]  
[REDACTED]  
[REDACTED]

APPEAL NO. 19N-00006

PETITIONER,

Vs.

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned convened four administrative hearings in the above-referenced matter on March 8, 2019 at 10:04 a.m.; on March 27, 2019 at 9:16 a.m.; on June 21, 2019 at 12:51 p.m.; and on September 19, 2019 at 9:21 a.m. All hearings were held [REDACTED] nursing facility.

**APPEARANCES**

[REDACTED]  
[REDACTED]  
[REDACTED]

**ISSUE**

At issue is the facility's intent to discharge the petitioner due to non-payment of a bill for services. A Nursing Home Transfer and Discharge Notice was issued on January 9, 2019. The facility has the burden of proof to establish by clear and

convincing evidence that the discharge is appropriate under federal regulations found in 42 C.F.R. § 483.15.

### **PRELIMINARY STATEMENT**

The March 8, 2019 hearing was continued to allow all parties to reach a settlement agreement. The hearing was reset to March 27, 2019. The March 27, 2019 hearing was continued to allow the petitioner to submit additional evidence. The hearing was reset to April 24, 2019. On April 23, 2019, the petitioner requested a continuance as he needed additional time to gather evidence. The continuance was granted, and the hearing was reset to May 23, 2019. On March 21, 2019, the petitioner requested another continuance as he needed additional time to gather evidence. The continuance was granted, and the hearing was reset to June 21, 2019. The petitioner's mother did not appear at the June 21, 2019 hearing as she was out of town, so the June 21, 2019 was continued to September 19, 2019. At the September 19, 2019 hearing, the undersigned inadvertently stated on the record that the date was July 19, 2019.

The undersigned could not locate the recording of the June 21, 2019 hearing; however, the undersigned's notes indicated that neither party submitted documents or provided testimony utilized in this Final Order.

The petitioner appeared at the March 8, 2019 hearing and at the June 21, 2019 hearings. The petitioner did not testify at the hearings. The petitioner presented one witness at the March 8, 2019 hearing who testified: [REDACTED] Certified Ombudsman. The petitioner presented two witnesses at the March 27, 2019 hearing who testified [REDACTED] Certified Ombudsman; and [REDACTED] District

Ombudsman Manager. The petitioner presented one witness at the June 21, 2019 hearing who testified [REDACTED] Certified Ombudsman.

The respondent presented one witness at the March 8, 2019 hearing who testified: [REDACTED] Nursing Home Administrator. The respondent presented two witnesses at the March 27, 2019 hearing who testified: [REDACTED] Social Services Director; and [REDACTED], Nursing Home Administrator. The respondent presented one witness at the June 21, 2019 hearing who testified [REDACTED] [REDACTED] Assistant Social Services Director. The respondent presented one witness at the September 19, 2019 who testified: [REDACTED] Social Services Director. [REDACTED] observed the September 9, 2019 proceedings. All of the respondent's witnesses and observers are from The Home Association nursing facility.

The petitioner submitted no exhibits at the hearings. At the March 8, 2019 hearing, the respondent submitted one exhibit, which was accepted into evidence and entered as Respondent's Exhibit "1". At the September 19, 2019 hearing, the respondent submitted one exhibit, which was accepted into evidence and entered as Respondent's Exhibit "2".

#### **FINDINGS OF FACT**

1. The petitioner entered the facility in December 2017.
2. On January 9, 2019, the facility issued the petitioner a Nursing Home Transfer and Discharge Notice. The reason for the discharge was "your bill for services at this facility has not been paid after reasonable and appropriate notice to pay."

(Respondent's Exhibit 1)

3. The petitioner receives ■ ■ gross per month in Social Security benefits. The petitioner's Social Security income is being garnished ■■■■■ per month for past due child support. The petitioner receives Social Security benefits in the net amount of ■■■ per month. The petitioner is allowed ■■■ per month to purchase personal items.

4. The respondent and the petitioner's mother agreed the petitioner could pay the facility \$243 per month. However, the respondent also explained the petitioner still owes the facility \$695 (\$938 - \$243) per month with the \$695 per month being added to the petitioner's outstanding balance.

5. The Department of Children and Families (DCF) determined the petitioner's patient responsibility as \$909 per month from July 2018 through December 31, 2018; and as \$938 per month effective January 2019 and ongoing. DCF did not include the petitioner's court order child support amount when determining the petitioner's monthly patient liability amount.

6. The petitioner's witness explained DCF would include the petitioner's court order child support amount in the determination of the petitioner's patient liability amount if certain documentation was submitted to DCF.

7. The petitioner's mother explained she was required to contact the Department of Revenue, Child Support Enforcement Unit (CSE) to determine how she was able to obtain the necessary information that would allow DCF to redetermine her son's patient liability. The petitioner's mother also explained she was informed by CSE that she would need to establish herself as the petitioner's Legal Guardian to be able to conduct business with the agency. The petitioner's mother further explained she did not have

the money to hire an attorney to go to court to establish herself as the petitioner's Legal Guardian.

8. At the March 8, 2019 hearing, the respondent explained the petitioner's outstanding balance was \$11,745.86. At the September 19, 2019 hearing, the respondent explained the petitioner's outstanding balance as \$16,610.86.

9. During the March 8, 2019 hearing, the petitioner's mother requested the respondent to forgive the petitioner's outstanding balance of \$11,745.86. The petitioner's mother explained she would not sign a written payment agreement unless the respondent forgives her son's outstanding balance. The respondent explained that its corporate office denied the petitioner's request to forgive the petitioner's outstanding balance.

10. The petitioner's mother and the respondent discussed a payment arrangement to repay the petitioner's outstanding balance; however, the petitioner's mother would not sign a written payment arrangement to repay her son's outstanding balances owed to the facility.

11. The respondent explained the petitioner's mother made the following payments to the facility: \$0 per month for the months of January 2018 through July 2018; \$300 in August 2018; \$100 in October 2018; \$275 in January 2019; and \$243 per month from February 2019 and ongoing

#### **CONCLUSIONS OF LAW**

12. The Department of Children and Families, Office of Appeal Hearings, has jurisdiction over the subject matter of this proceeding and the parties, pursuant to

Section 400.0255(15), Florida Statutes. In accordance with said authority, this order is the final administrative decision of the Department of Children and Families.

13. Federal Regulations, appearing at 42 C.F.R. § 483.15, set forth the reasons a facility may involuntarily discharge a resident as follows: Admission, transfer and discharge rights.

(c) Transfer and discharge—(1) Facility requirements—(i) The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless—

...

(E) The resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility. Non-payment applies if the resident does not submit the necessary paperwork for third party payment or after the third party, including Medicare or Medicaid, denies the claim and the resident refuses to pay for his or her stay. For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only allowable charges under Medicaid;

14. The reason for the petitioner's discharge is due to his non-payment of a bill for services while living at the facility. The petitioner did not make any payments to the respondent's nursing home facility from January 2018 through July 2018; for September 2018; and for November 2018. The petitioner has made the following payments to the nursing home facility in the amount of \$300 for August 2018; in the amount of \$100 for October 2018; in the amount of \$275 for January 2019; and in the amount of \$243 per month to the facility for the months of February 2019 through September 2019. To the date of this order, the petitioner's current outstanding balance is \$16,610.86.

15. The facility billed the petitioner the patient liability amount of \$909 per month from July 2018 through December 2018; and \$938 per month effective January 2019 and

ongoing. The petitioner's mother pays a portion of his patient liability as the petitioner's net Social Security income is less than his monthly patient liability amount.

16. The evidence indicates the respondent and the petitioner discussed a payment arrangement toward his outstanding balance; however, the petitioner's mother did not agree to the payment arrangement because the respondent did not forgive the petitioner's outstanding balances.

17. The hearing officer concludes the respondent has met the burden of proof to establish that the petitioner has been given reasonable and appropriate notice of the need to pay for his stay at the facility. Furthermore, the petitioner has not made any payments towards his outstanding balance and has not cooperated with the facility to create a payment plan to repay the facility for his outstanding balance.

18. Based on the evidence presented, the nursing home facility has established that the petitioner has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) his stay at the facility. This is one of the six reasons provided in federal regulation (42 C.F.R. § 483.15) for which a nursing facility may involuntarily discharge a resident.

19. One step in the discharge process is establishing that the reason for a discharge is lawful. The nursing facility must also provide discharge planning, which includes identifying an appropriate transfer or discharge location and sufficiently preparing the affected resident for a safe and orderly transfer or discharge from the facility. The hearing officer in this case cannot and has not considered either of these issues. The hearing officer only considered whether the discharge is for a lawful reason.

20. Any discharge by the nursing facility must comply with all applicable federal regulations, Florida Statutes, and Agency for Health Care Administration requirements. Should the resident have concerns about the appropriateness of the discharge location or the discharge planning process, the resident may contact the Agency for Health Care Administration's health care facility complaint line at (888) 419-3456.

### **DECISION**

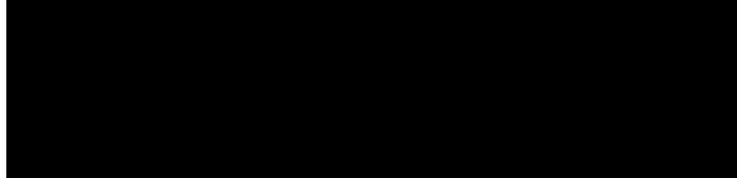
Based upon the foregoing Findings of Fact and Conclusions of Law, the petitioner's appeal is DENIED, as the facility's action to discharge the petitioner is in accordance with federal regulations. The facility may proceed with the discharge action in accordance with the Agency for Health Care Administration's rules and guidelines.

### **NOTICE OF RIGHT TO APPEAL**

The decision of the hearing officer is final. Any aggrieved party may appeal the decision to the district court of appeals in the appellate district where the facility is located. Review procedures shall be in accordance with the Florida Rules of Appellate Procedure. To begin the judicial review, the party must file one copy of a "Notice of Appeal" with the Office of Appeal Hearings, Bldg. 5, Rm.255, 1317 Winewood Blvd., Tallahassee, FL 32399-0700. The party must also file another copy of the "Notice of Appeal" with the appropriate District Court of Appeal. The Notices must be filed within thirty (30) days of the date stamped on the first page of the final order. The petitioner must either pay the court fees required by law or seek an order of indigency to waive those fees. The department has no funds to assist in this review, and any financial obligations incurred will be the party's responsibility.

DONE and ORDERED this 14 day of October, 2019,

in Tallahassee, Florida.



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